

§ 229.1106

(a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, other explanatory disclosure, including disclosure explaining the absence of any static pool information, may be provided.

(d) The following information provided in response to this section shall not be deemed to be a prospectus or part of a prospectus for the asset-backed securities nor shall such information be deemed to be part of the registration statement for the asset-backed securities:

(1) With respect to information regarding prior securitized pools of the sponsor that do not include the currently offered pool, information regarding prior securitized pools that were established before January 1, 2006; and

(2) With respect to information regarding the currently offered pool, information about the pool for periods before January 1, 2006.

(e) For prospectuses to be filed pursuant to § 230.424 of this chapter that include information specified in paragraph (d)(1) or (d)(2) of this section, the prospectus shall disclose that such information is not deemed to be part of that prospectus or the registration statement for the asset-backed securities.

(f) If any of the information identified in paragraph (d)(1) or (d)(2) of this section that is to be provided in response to this section is unknown and not available to the registrant without unreasonable effort or expense, such information may be omitted, provided the registrant provides the information on the subject it possesses or can acquire without unreasonable effort or expense, and the registrant includes a statement in the prospectus showing that unreasonable effort or expense

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would be involved in obtaining the omitted information.

[70 FR 1597, Jan. 7, 2005, as amended at 70 FR 72373, Dec. 5, 2005]

§ 229.1106 (Item 1106) Depositors.

If the depositor is not the same entity as the sponsor, provide separately the information regarding the depositor called for by paragraphs (a) and (b) of Item 1104 of this Regulation AB, and, to the extent the information would be material and materially different from the sponsor, paragraphs (c) and (d) of Item 1104 of this Regulation AB. In addition, provide the following information:

(a) The ownership structure of the depositor.

(b) The general character of any activities the depositor is engaged in other than securitizing assets and the time period during which it has been so engaged.

(c) Any continuing duties of the depositor after issuance of the asset-backed securities being registered regarding the asset-backed securities or the pool assets.

§ 229.1107 (Item 1107) Issuing entities.

Provide the following information about the issuing entity:

(a) State the issuing entity's name and describe the issuing entity's form of organization, including the State or other jurisdiction under whose laws the issuing entity is organized. File the issuing entity's governing documents as an exhibit.

(b) Describe the permissible activities and restrictions on the activities of the issuing entity under its governing documents, including any restrictions on the ability to issue or invest in additional securities, to borrow money or to make loans to other persons. Describe any provisions in the issuing entity's governing documents allowing for modification of the issuing entity's governing documents, including its permissible activities.

(c) Describe any specific discretionary activities with regard to the administration of the asset pool or the asset-backed securities, and identify the person or persons authorized to exercise such discretion.

(d) Describe any assets owned or to be owned by the issuing entity, apart from the pool assets, as well as any liabilities of the issuing entity, apart from the asset-backed securities. Disclose the fiscal year end of the issuing entity.

(e) If the issuing entity has executive officers, a board of directors or persons performing similar functions, provide the information required by Items 401, 402, 403 404 and 407(a), (c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S-K (§§ 229.401, 229.402, 229.403, 229.404 and 229.407(a), (c)(3), (d)(4), (d)(5) and (e)(4)) for the issuing entity.

(f) Describe the terms of any management or administration agreement regarding the issuing entity. File any such agreement as an exhibit.

(g) Describe the capitalization of the issuing entity and the amount or nature of any equity contribution to the issuing entity by the sponsor, depositor or other party.

(h) Describe the sale or transfer of the pool assets to the issuing entity as well as the creation (and perfection and priority status) of any security interest in favor of the issuing entity, the trustee, the asset-backed security holders or others, including the material terms of any agreement providing for such sale, transfer or creation of a security interest. File any such agreements as an exhibit. In addition to an appropriate narrative description, also provide this information graphically or in a flow chart if it will aid understanding.

(i) If the pool assets are securities, as defined under the Securities Act, state the market price of the securities and the basis on which the market price was determined.

(j) If expenses incurred in connection with the selection and acquisition of the pool assets are to be payable from offering proceeds, disclose the amount of such expenses. If such expenses are to be paid to the sponsor, servicer contemplated by Item 1108(a)(2) of this Regulation AB, depositor, issuing entity, originator contemplated by Item 1110 of this Regulation AB, underwriter, or any affiliate of the foregoing, separately identify the type and amount of expenses paid to each such party.

(k) Describe to the extent material any provisions or arrangements included to address any one or more of the following issues:

(1) Whether any security interests granted in connection with the transaction are perfected, maintained and enforced.

(2) Whether declaration of bankruptcy, receivership or similar proceeding with respect to the issuing entity can occur.

(3) Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the sponsor, originator, depositor or other seller of the pool assets, the issuing entity's assets will become part of the bankruptcy estate or subject to the bankruptcy control of a third party.

(4) Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the issuing entity, the issuing entity's assets will become subject to the bankruptcy control of a third party.

(1) If applicable law prohibits the issuing entity from holding the pool assets directly (for example, an "eligible lender" trustee must hold student loans originated under the Federal Family Education Loan Program of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*)), describe the arrangements instituted to hold the pool assets on behalf of the issuing entity. Include disclosure regarding the arrangements taken, as applicable, regarding the items in paragraph (k) of this section with respect to any such additional entity that holds such assets on behalf of the issuing entity.

[70 FR 1597, Jan. 7, 2005, as amended at 71 FR 53259, Sept. 8, 2006]

§ 229.1108 (Item 1108) Servicers.

Provide the following information for the servicer.

(a) *Multiple servicers.* Where servicing of the pool assets utilizes multiple servicers (e.g., master servicers that oversee the actions of other servicers, primary servicers that have primary contact with the obligor, or special servicers for specific servicing functions):

(1) Provide a clear introductory description of the roles, responsibilities